

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1417

FRANCES SYPTAK,

Plaintiff - Appellant,

versus

ARABIAN AMERICAN OIL COMPANY,

Defendant - Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Lacy H. Thornburg, District Judge. (CA-95-107-5-T)

Submitted: December 29, 1998

Decided: January 20, 1999

Before WIDENER, WILKINS, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Phyllis A. Palmieri, PALMIERI & ASSOCIATES, Morganton, North Carolina, for Appellant. V. Scott Kneese, Elizabeth Mata Kroger, BRACEWELL & PATTERSON, L.L.P., Houston, Texas, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Frances Syptak, proceeding on behalf of her deceased husband, Harold G. Syptak, appeals the district court's order dismissing his complaint under the Age Discrimination in Employment Act. See 29 U.S.C. §§ 621-634 (1994). This case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). After an exhaustive analysis, the magistrate judge ultimately recommended that relief be denied and advised the parties that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite receiving an extension of time in which to do so, Syptak did not file his objections to the magistrate judge's recommendation until thirteen days after the expiration of the extended period. The district court struck the untimely objections from the record.

The timely filing of objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). See generally Thomas v. Arn, 474 U.S. 140 (1985). Appellant has waived appellate review by failing to file timely objections after receiving proper notice. Accordingly, we affirm the judgment of the district court. We grant the motion to submit the case on the briefs because the

facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED